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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/264,464	03/08/1999	EDWARD L. BLACH	12460.1-US-1	3152

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EXAMINER

DAWSON, GLENN K

ART UNIT PAPER NUMBER

3761

DATE MAILED: 01/08/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/264,464

Applicant(s)

BLACH ET AL.

Examiner

Glenn K Dawson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 17-19, 21, 22, 24, 25, 27-33 and 37-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9, 21, 22, 38, 39 and 52 is/are allowed.
- 6) ☒ Claim(s) 17, 19, 24, 25, 27-33, 37, 40-46 and 48-51 is/are rejected.
- 7) ☒ Claim(s) 18 and 47 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

The status of claims 46-52 was not apparent from the last office action and therefore the finality of the previous office action is withdrawn in favor of the following new Final Rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 17,19,40 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson-4995383.

Anderson discloses a support device having three components- two side pieces with Velcro attachment regions, and a central component with Velcro for adjustable positioning between and releasably connecting to the side pieces.

Claims 24,25,27-33,37,41-45 and 48-51 are rejected under 35 U.S.C. 102(e) as being Anticipated by Raunig-5817039.

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Raunig discloses a nasal support device 6 having an adhesive layer and a support layer. The medial portions of the device are longer than lateral portions in both the longitudinal and lateral directions. The top and bottom central projections constitute the claimed apexes, projections or centering means.

***Allowable Subject Matter***

Claims 1-9,21,22,38,39 and 52 are allowed.

Claims 18 and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 12-15-03 have been fully considered but they are not persuasive.

The device of Anderson could easily be placed with parts of the side pieces on the nasal walls of a horse and the central portion extending therebetween. The span across the nose of horses varies with age and breed. Also, if necessary, end pieces of the central tape 1a could overlap the outer sections of each attachment region 1d,1e of each side piece thus making the overall length of the device shorter. As the size of human's also varies, the examiner considers the device of Anderson, as disclosed meets the broad claim limitations with regards to size. The examiner did not characterize the Andersson device as a "nasal strip for a horse". The examiner contends that the Andersson device has all of the claim elements and meets all of the claim limitations, including those of the preamble, because... one "could" use the

Andersson device on a horse's nose, if one so desired. That is to say that there is nothing preventing someone from placing it on a horses nose. The preamble is drawn to a support device. The fact that it also recites the intended use of supporting nasal tissues of an animal is merely that, intended use. The examiner contends that given the apparent size and adjustability of the Andersson device that one "could" place it on a horses nose.

The splint 6 of Raunig is adhesively attached to the nasal walls, and since the device is made of aluminum the examiner contends that once adhered to the nose, the splint would act to restrict the amount of inward draw of the nasal walls. Noting fig. 1 and col. 3 lines 14-20, the splint has an adhesive layer 4, a surface layer 1 and a support layer or structure 2. The layer 2 would be the part configured to reduce the drawing in of the nasal tissues during breathing.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K Dawson whose telephone number is 703-308-4304. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Glenn K Dawson  
Primary Examiner  
Art Unit 3761

Gkd  
07 January 2004